

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID ALLEN KNIGHT,  
Petitioner,

v.

PAUL BRAZELTON,  
Respondent.

Case No. [13-cv-04664-WHO](#) (PR)

**ORDER TO SHOW CAUSE**

**INTRODUCTION**

Petitioner David Knight seeks federal habeas relief from his state convictions. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. Respondent shall file an answer or dispositive motion in response to the habeas petition on or before May 19, 2014, unless an extension is granted.

**BACKGROUND**

According to the petition, an Alameda County Superior Court jury convicted Knight of second degree murder and attempted murder. He received a sentence of 36 years-to-life, plus 6 years, in state prison.

**DISCUSSION**

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

As grounds for federal habeas relief, Knight alleges that (1) defense counsel rendered ineffective assistance; (2) the jury instructions violated due process; (3) there was insufficient evidence to support his convictions; (4) the trial court admitted prejudicial evidence; (5) there was prosecutorial misconduct; and (6) there was cumulative error. When liberally construed, these claims are cognizable on federal habeas review.

**CONCLUSION**

1. The Clerk shall serve a copy of this order, the petition and all attachments thereto, on respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.

2. Respondent shall file with the Court and serve on petitioner, within ninety (90) days of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that previously have been transcribed and that are relevant to a determination of the issues presented by the petition.

1           3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse  
2 with the Court and serving it on respondent's counsel within thirty (30) days of the date the  
3 answer is filed.

4           4. In lieu of an answer, respondent may file, within ninety (90) days of the date this  
5 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory  
6 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent  
7 files such a motion, petitioner shall file with the Court and serve on respondent an  
8 opposition or statement of non-opposition within thirty (30) days of the date the motion is  
9 filed, and respondent shall file with the Court and serve on petitioner a reply within fifteen  
10 (15) days of the date any opposition is filed.

11           5. Petitioner is reminded that all communications with the Court must be served on  
12 respondent by mailing a true copy of the document to respondent's counsel.

13           6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
14 Court and respondent informed of any change of address and must comply with the  
15 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this  
16 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17           7. Upon a showing of good cause, requests for a reasonable extension of time will  
18 be granted provided they are filed on or before the deadline they seek to extend.

19           8. Knight's application to proceed *in forma pauperis* (Docket Nos. 2 and 5) is  
20 GRANTED.

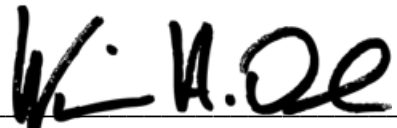
21           9. Knight's motion for the appointment of counsel (Docket No. 3) is DENIED  
22 without prejudice. 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint  
23 counsel to represent a habeas petitioner whenever "the court determines that the interests  
24 of justice so require" and such person is financially unable to obtain representation. But  
25 there is no right to counsel in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d  
26 722, 728 (9th Cir. 1986). The decision to appoint counsel is within the discretion of the  
27 district court, *see Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), and should be  
28 granted only when exceptional circumstances are present. *See generally* 1 J. Liebman &

1 R. Hertz, Federal Habeas Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994).  
2 Knight has not shown that there are exceptional circumstances warranting the appointment  
3 of counsel.

4 10. The Clerk shall terminate Docket Nos. 2, 3, and 5.

5 **IT IS SO ORDERED.**

6 **Dated:** February 20, 2014

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8 WILLIAM H. ORRICK  
9 United States District Judge  
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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DAVID ALLEN KNIGHT,  
Plaintiff,

Case Number: CV13-04664 WHO  
**CERTIFICATE OF SERVICE**

v.

BRAZELTON et al,  
Defendant.

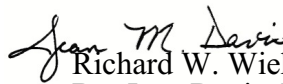
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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 20, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail.

David Allen Knight V77536  
Pleasant Valley State Prison  
P.O. Box 5248  
Coalinga, CA 93210

Dated: February 20, 2014

  
Richard W. Wieking, Clerk  
By: Jean Davis, Deputy Clerk